

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION AGENDA  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, OCTOBER 17, 2013  
REGULAR MEETING – 6:30 p.m.**

**BRADLEY HILLGREN  
Chair**

**LARRY TUCKER  
Vice Chair**

**KORY KRAMER  
Secretary**

**FRED AMERI**

**TIM BROWN**

**RAYMOND LAWLER**

**JAY MYERS**

**Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:**

**KIMBERLY BRANDT, Community Development Director**

**BRENDA WISNESKI, Deputy Community  
Development Director**

**LEONIE MULVIHILL, Assistant City Attorney**

**TONY BRINE, City Traffic Engineer**

**MARLENE BURNS, Administrative Assistant**

**NOTICE TO THE PUBLIC**

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or [lbrown@newportbeachca.gov](mailto:lbrown@newportbeachca.gov)).

**APPEAL PERIOD:** Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE  
THURSDAY, OCTOBER 17, 2013  
REGULAR MEETING – 6:30 p.m.**

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL**

**IV. PUBLIC COMMENTS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.*

**V. REQUEST FOR CONTINUANCES**

**VI. CONSENT ITEMS**

**ITEM NO. 1      MINUTES OF OCTOBER 3, 2013**

**Recommended Action:** Approve and file

**VII. STUDY SESSION**

**ITEM NO. 2      WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE UPDATE (PA2012-057)  
Site Location: City-wide**

**Summary:**

An amendment to the Newport Beach Municipal Code ("NBMC") to update regulations regarding wireless telecommunication facilities ("Telecom Facilities"). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

**Recommended Action:**

1. Provide direction to staff.

**VIII. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 6      MOTION FOR RECONSIDERATION**

**ITEM NO. 7      COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

**Committee Updates:**

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

**ITEM NO. 8      ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS  
WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR  
REPORT**

**ITEM NO. 9      REQUESTS FOR EXCUSED ABSENCES**

**IX. ADJOURNMENT**

**CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 100 Civic Center Drive**  
**Thursday, October 3, 2013**  
**REGULAR MEETING**  
**6:30 p.m.**

**I. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

**II. PLEDGE OF ALLEGIANCE** – Commissioner Myers

**III. ROLL CALL**

PRESENT: Ameri, Brown, Hillgren, Kramer, Lawler, and Myers

ABSENT: Tucker

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; and Ben Zdeba, Assistant Planner

**IV. PUBLIC COMMENTS**

Chair Hillgren invited those interested in addressing the Planning Commission on non-agenda items to do so at this time. There was no response and Chair Hillgren closed public comments.

**V. REQUEST FOR CONTINUANCES** - None

**VI. CONSENT ITEMS**

**ITEM NO. 1 MINUTES OF SEPTEMBER 19, 2013**

**Recommended Action:** Approve and file

Chair Hillgren noted modifications received from Mr. Jim Mosher.

**Motion** made by Commissioner Brown and seconded by Commissioner Lawler and carried (5 – 1 – 1) to approve the minutes of September 19, 2013, as corrected.

AYES: Ameri, Brown, Kramer, Lawler and Myers

NOES: None

ABSTENTIONS: Hillgren

ABSENT: Tucker

**VII. PUBLIC HEARING ITEMS**

**ITEM NO. 2 SANTA ANA HEIGHTS CODE AMENDMENT (PA2013-114)**

**Site Location: Residential Equestrian (REQ) Zoning District within Santa Ana Heights**

Assistant Planner Ben Zdeba presented background of the item and noted that any General Plan or Code Amendment pertinent to the Santa Ana Heights Specific Plan is subject to concurrence by the County. Since the Annual Use Permit requirement was carried over, it has never been implemented and there is no process or fee for it. He addressed previous Council direction and a draft ordinance was developed and sent to the County for concurrence, which resulted in concurring resolutions from the Board of Supervisors and Successor Agency. He reported on the land use area, surrounding properties, details of the amendment, and required property maintenance standards which are actively enforced by Code Enforcement. Mr. Zdeba presented recommendations as listed in the staff report.

Chair Hillgren opened the public hearing.

Richard Lehn expressed concern of pests, dust and other violations, including commercial use by a neighboring property owner and an increased number of horses on the property. He stated that nothing has been done over the years to resolve the problem.

Tom Gey reported that he has five horses on his property and that they are used exclusively by him and his wife. He added that when the property was under County jurisdiction they had a permit and would be happy to obtain one from the City but would also be glad to have the requirement removed. He stated that the pest problem is not because of horses, but rather, there are rats anywhere in the City. He stated there are ten to 15 properties that would need City permits and felt that it is a huge burden for the City to go through that process and that it is not necessary.

Jim Mosher noted typographical errors in the draft resolution, referenced statements of fact and the ordinance, and suggested revising the format.

Chair Hillgren closed the public hearing.

Discussion followed regarding the enforcement process and ensuring the same with or without a permit. It was noted that Code Enforcement staff responds to issues on a complaint basis with or without a permit. Code Enforcement has remedies in that they can issue citations. Property owners are not allowed to use the property commercially.

**Motion** made by Commissioner Kramer and seconded by Commissioner Brown and carried (6 – 1) to adopt a resolution recommending City Council approval of Code Amendment No. CA2013-005 as amended by Mr. Mosher's suggestions.

AYES:	Ameri, Brown, Hillgren, Kramer, Lawler, and Myers
NOES:	None
ABSTENTIONS:	None
ABSENT:	Tucker

## **VIII. STAFF AND COMMISSIONER ITEMS**

### **ITEM NO. 3 MOTION FOR RECONSIDERATION - None**

### **ITEM NO. 4 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

Deputy Community Development Director Brenda Wisneski presented Chair Hillgren with his five-year pin.

#### **Committee Updates:**

#### **1. Land Use Element Amendment Advisory Committee**

Ms. Wisneski reported that at its last meeting, the Commission reviewed some land-use changes which were reviewed and authorized by the Land Use Element Committee as the project description for EIR for the amendment. Additionally, Council approved the Housing Element last week.

In response to an inquiry by Commission Kramer, Ms. Wisneski reported that Woody's Wharf will be considered by Council next week.

#### **2. General Plan/Local Coastal Program Implementation Committee**

Chair Hillgren reported that the Committee met and there was continued discussion and progress. He indicated that the Coastal Commission staff will be in attendance at the Committee's next meeting.

### **ITEM NO. 5 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT - None**

**ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES**

Commissioner Kramer requested an excused absence for the next Planning Commission meeting scheduled for October 17, 2013.

**IX. ADJOURNMENT**

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:00 p.m.

The agenda for the Regular Meeting was posted on September 27, 2013, at 3:00 p.m., in the binder and on the City Hall Electronic Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

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Bradley Hillgren, Chair

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Kory Kramer, Secretary

**CITY OF NEWPORT BEACH**  
**PLANNING COMMISSION STAFF REPORT**

October 17, 2013 – Study Session  
Agenda Item No. 2

**SUBJECT:** Wireless Telecommunications Facilities Ordinance Update (PA2012-057)  
• Code Amendment No. CA2012-004

**PLANNER:** James Campbell, Principal Planner  
(949) 644-3210, [jcampbell@newportbeachca.gov](mailto:jcampbell@newportbeachca.gov)

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**PROJECT SUMMARY**

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“Telecom Facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

**RECOMMENDED ACTION**

Provide direction to staff.

**DISCUSSION**

The Planning Commission conducted a study session on September 19, 2013. During the meeting, the Commission discussed the draft ordinance in detail while receiving input from several wireless telecommunications industry representatives. Based on the dialog, staff has identified the following issues for further discussion and direction.

**1. Telecom Facilities in Residential Areas - §20.49.050(B)**

The wireless telecommunications industry has requested the possibility to locate facilities in residential areas (R-1 and R-2 zones) where they are presently prohibited. At the request of the Commission, staff has examined the issue and recommends no change to the current prohibition.

Many cities prohibit wireless telecommunications facilities in residential zones. Some permit them subject to specific development standards (e.g., setbacks, height, etc.) and discretionary review consisting of a conditional use permit or minor conditional use permit. For example, Irvine allows wireless telecommunications facilities in residential zones provided that minimum setbacks are met and facilities are separated from each other. Setbacks from residential uses are measured from the facility to property lines and they range between 50 to 300 feet depending upon the classification of the facility: more visible facilities are setback farther and setbacks do not apply to facilities in the public right-of-way. In Newport Beach, opportunities to locate telecommunication facilities within low density residential areas is presently provided within the public right-of-way, nearby non-residential or

multi-family property, or in association controlled open space parcels (i.e., clubhouses or landscape parcels).

*Question: Should the City consider allowing broader access to residential areas?*

*Recommendation: Maintain regulation limiting location in R-1 and R-2 zones.*

## **2. Collocation - §20.49.050(D)**

The City's ordinance in effect since 2002, requires new facilities to attempt to collocate with existing facilities when proposed within 1,000 feet of an existing facility. Additionally, facilities permitted pursuant to the ordinance must also accept a future collocated facility. Wireless industry representatives have requested elimination of the current collocation requirements as they struggle to comply and often it is infeasible to collocate. Barriers include prior facility operator or property owner resistance, regulatory limitations, physical constraints, and clearance requirements.

Current collocation requirements were a product of the times when freestanding structures were commonplace coupled with a desire to minimize the number of installations. Compliance with the collocation requirements necessitates significant effort by applicants and staff to investigate collocation possibilities and potentially determine whether or not it is feasible. Antennas are often much smaller today and can be hidden behind architectural screens or can be installed on streetlights. As antennas have become smaller and screened, collocation becomes increasingly difficult to implement or irrelevant. Today, State and federal law encourage collocation by mandating ministerial review and the elimination of the ability to deny a request for collocation. For these reasons, staff recommends eliminating the collocation requirement entirely.

*Question: Should the City eliminate current collocation requirements?*

*Recommendation: Eliminate collocation requirement.*

## **3. Public View Protection - §20.49.060(B)**

The proposed draft update requires an evaluation of the potential impact to public views from General Plan identified public vantage points. The Commission expressed a desire to expand the standard to include other public views. This potential change is in keeping with the Natural Resources Goal NR20 to preserve significant visual resources and the overall goal of the telecom ordinance to minimize visual impacts of telecommunications facilities. Staff will modify the language to include other public views. In practice, a potential applicant will need to consult with staff prior to filing an application where staff can provide guidance in identifying important public views for consideration when they are not identified by the General Plan.

*Question: Confirm additional provisions needed to address public views.*

*Recommendation: Include additional provisions.*

#### **4. Height - §20.49.060(C)**

The current ordinance allows Telecom Facilities at the upper height limit of the zoning district, with an additional 15 feet with City Council approval. There is no ability to go higher. The current draft ordinance would have allowed facilities to be 5 feet above the base height limit with taller facilities requiring a Variance. Staff believes further change is warranted and recommends the upper height limit with requests to exceed this limit falling into two categories; 1) facilities up to 15 feet higher than the upper limit being subject to a Conditional Use Permit (“CUP”), and 2) facilities higher than 15 feet above the upper height limit would require a Variance.

*Question: Should the City maintain existing height limits and introduce the Variance process for proposed facilities taller than 15 above the upper height limit?*

*Recommendation: 1) CUP for facilities up to 15 feet above the upper height limit of a zoning district, and 2) Variance for facilities taller than 15 feet above the height limit.*

The proposed draft update also introduces a new regulation that would require facilities to be installed at the minimum height to achieve an “average” coverage. A higher than average standard is likely desired by the community and based on the subjectivity of determining what a particular standard of coverage might be leads staff to recommend eliminating this concept. Objective height limits are established by the various zoning districts. Screening would be required by the ordinance and/or the review authority through the Zoning Clearance, Minor Use Permit (“MUP”), or CUP process.

*Question: Should height be evaluated on the standard of coverage being provided?*

*Recommendation: Eliminate this provision.*

#### **5. Emergency Communications Review - §20.49.070(G)**

Industry representatives indicated that the Orange County Fire Authority does not review new installations for interference and that there is no need to require the review. Many systems do not have a significant potential to interfere with emergency communications due to adequate separation of frequencies; however, some systems operate on frequencies close to emergency communications equipment and their potential location can be a factor. Staff contacted representatives from both Newport Beach Police and Fire Departments and they do not recommend eliminating public safety review of new or altered facilities.

*Question: Should review by the Newport Beach Police and Fire Departments be required?*

*Recommendation: Review should be required.*

#### **6. Modification of Existing Facilities - §20.49.100**

Staff proposes a five percent threshold of change of existing facilities where the Zoning Clearance (non-discretionary) process would be used. Requests to modify an existing facility greater than five percent would require the same review process as a new facility (i.e., Zoning



Clearance, MUP or CUP depending on the classification of the facility). Wireless telecommunications industry representatives have requested the City use previously issued Federal Communications Commission (“FCC”) guidelines that (in part) suggest a ten percent standard for an increase in height. Staff is concerned that a ten percent standard could result in an excessive increase and detrimental to an area or public view.

*Question: Should the threshold for requiring discretionary review to modify an existing facility be five percent or ten percent?*

*Recommendation: Establish threshold at five percent.*

## **7. Radio Frequency (“RF”) Compliance Report - §20.49.110**

The telecommunication industry recommends the City no longer require submittal of RF Compliance Reports. Many communities do not require an RF Compliance Report and rely upon the FCC to “police” licensed facilities. Staff understands that the FCC does not specifically require an independent compliance report unless there is evidence of non-compliance. Out of caution, staff does not recommend eliminating the RF Compliance Report for new or altered facilities.

*Question: Should RF Compliance Reports be required?*

*Recommendation: Yes, RF Compliance Reports shall be required.*

## **Pending FCC Rulemaking**

On September 26, 2013, the FCC issued a Notice of Proposed Rulemaking that is expected to clarify how federal law applies to the City’s ability to regulate wireless telecommunications facilities. Based upon what is known about the proposed draft rules, staff is concerned that the City’s ability to appropriately regulate facilities to avoid visual impacts may be jeopardized. The rulemaking process has just begun and the FCC is requesting feedback before actually publishing proposed rules. Staff will monitor FCC progress report as necessary.

## **Next Steps**

Based upon Commission direction and public feedback, staff will prepare a final revised draft ordinance that will be published in advance of a future public hearing to allow for review and comment.

Prepared by:

Submitted by:

  
James Campbell, Principal Planner

  
Brenda Wisneski, AICP, Deputy Director